SLOUGH MULTIFUEL EXTENSION PROJECT

Planning Inspectorate Ref. EN010129

The Slough Multifuel Extension Order

Land at Edinburgh Avenue, Slough, SL1 4TU

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The Planning Act 2008

The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 – Regulation 5(2)(c)

Applicant: SSE Slough Multifuel Limited

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EXPLANATORY MEMORANDUM
THE SLOUGH MULTIFUL EXTENSION ORDER 202[ ]

1. INTRODUCTION

1.1 SSE Slough Multifuel Limited (the "**undertaker**") has made an application (the "**Application**") to the Secretary of State for a development consent order ("**DCO**") to authorise an extension to the Slough Multifuel combined heat and power generating station with the effect that, once extended, the extended generating station will have a gross installed capacity of up to 60MW (which is defined as the **"authorised development"** and described at Schedule 1 (Authorised Development) to the draft DCO which accompanies the Application and is entitled the Slough Multifuel Extension Order 20[ ] (the "**Order**")).

1.2 The purpose of an explanatory memorandum (the "**Memorandum**") is to assist the Examining Authority, Interested Parties and the Secretary of State in understanding the rights and powers sought within the Order. This Memorandum therefore explains the purpose and effect of each Article of, and Schedule to, the Order. This is as required by regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.

1.3 As specified in the Planning Inspectorate's Advice Note Fifteen (Drafting Development Consent Orders), this Memorandum sets out:

1.3.1 the source of the provision (whether it be a previous made DCO, or a novel provision);

1.3.2 the section or schedule of the Planning Act 2008 (the "**2008 Act**") under which it is made;

1.3.3 why it is relevant to the proposed development; and

1.3.4 why the undertaker considers it to be important / essential to the delivery of the proposed development.

1.4 This Memorandum should be read alongside the Order and the various documents submitted in respect of the Application. Terms used in the Order have the same meaning in this Memorandum unless otherwise specified.

2. THE PURPOSE OF THE ORDER

The Existing Generating Station

2.1 The undertaker has consent under the Town and Country Planning Act 1990 (the "**TCPA 1990**") for a multifuel generating station of "*up to 50 Megawatts*" (the "**existing generating station**") located within the Slough Heat and Power site in Slough.

2.2 The existing generating station is consented pursuant to the following planning permissions:

2.2.1 Planning permission P/00987/024 dated 2 June 2017, as varied by (i) section 73 permission P/00987/035 dated 3 March 2020 (ii) non-material amendment P/00987/42 dated 6 April 2020 and (iii) section 73 permission P/00987/51 dated 1 February 2022, which is now the operative permission (the "**TCPA permission**");

2.2.2 Planning permission P/00987/025 dated 2 June 2017 for demolition of a fuel store and construction of a central site services building, installation of a water treatment plant, provision of replacement car parking and associated works (the "**further TCPA permission**");

2.2.3 Planning permission P/00987/052 dated 4 May 2022 for the construction of a weighbridge gatehouse, silo enclosure and external staircase at Cooling Tower 8; and

2.2.4 Planning permission P/19876/000 dated 5 August 2022 for erection of a new boundary fence at the land off Greenock Road.

2.3 Construction of the existing generating station has commenced pursuant to the TCPA permission and the further TCPA permission.

The extension authorised by the Order

2.4 The authorised development is an extension to the existing generating station resulting in a gross installed generating capacity of up to 60MW and comprises:

2.4.1 a boiler primary air preheating system comprising heat exchanger bundles, pipework, valves, pipe supports, thermal insulation, instrumentation, cabling and containment;

2.4.2 a boiler secondary air preheating system comprising heat exchanger bundles, pipework, valves, pipe supports, thermal insulation, instrumentation, cabling and containment; and

2.4.3 mechanical modifications to the actuated stream turbine inlet control valve to allow steam capacity to be increased (**Work No. 1**).

2.5 Section 31 of the 2008 Act provides that a DCO is required for "*development to the extent that the development is or forms part of a nationally significant infrastructure project*" (emphasis added).

The development authorised

2.6 'Development' is defined in section 32 of the 2008 Act as having the same meaning as in the TCPA 1990 (subject to some caveats that are not applicable to the authorised development). Under section 55(1) of the TCPA 1990 'development' means "*the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land*". The physical extension works to the existing generating station (see paragraph 2.4 above) are 'engineering operations' and therefore the authorised development constitutes 'development' within the meaning of the 2008 Act.

2.7 Section 115(1) of the 2008 Act provides that development consent may be granted for *"(a) development for which development consent is required, or (b) associated development*". Consent is also sought for other "associated development" as defined in Schedule 1 (Authorised Development) of the Order, which is connected with and in addition to Work No. 1.

The Nationally Significant Infrastructure Project ("NSIP")

2.8 Nationally significant infrastructure projects are defined in section 14(1) of the 2008 Act. Section 14(1)(a) includes: "*(a) the construction or extension of a generating station*" (emphasis added). Therefore, under section 14(1)(a) both the construction of a generating station or, alternatively, the extension of a generating station can be an NSIP. Further definition is provided in section 15 of the 2008 Act.

2.9 Section 15(1) of the 2008 Act provides as follows (emphasis added):

"(1) The construction or extension of a generating station is within section 14(1)(a) only if the generating station is or (when constructed or extended) is expected to be within subsection (2) …

(2) A generating station is within this subsection if –

(a) it is in England,

(aa) it does not generate electricity from wind,

(b) it is not an offshore generating station, and

(c) its capacity is more than 50 megawatts".

2.10 The extended generating station will, when extended (i.e. following the authorised development), have a capacity of more than 50MW (up to 60MW as described in Work No.1).

2.11 Section 15 of the 2008 Act anticipates that an extension may bring a generating station above the 50MW threshold, in that it states that the generating station will fall within section 14 of the 2008 Act if it is "*expected to*" have a capacity of more than 50MW "*when extended*".

2.12 Section 15 of the 2008 Act also prescribes thresholds for when the construction or extension of a generating station comprise an NSIP by reference to capacity rather than geographical or physical extent. The term 'extension' in relation to a generating station is defined in section 235 of the 2008 Act as having the meaning given by section 36(9) of the Electricity Act 1989 (the "**1989 Act**"), which provides that "*In this Part 'extension' in relation to a generating station, includes the use by the person operating the station of any land or areas of waters (wherever situated) for a purpose directly related to the generation of electricity by that station and 'extend' shall be construed accordingly*." It is clear from this, non-exhaustive, definition that the term 'extension' is not limited to a physical extension to the footprint of the generating station. The emphasis that the use is of "*any land*" "*wherever situated*" clarifies that geographical location is not an important qualifier to what is or is not an 'extension'.

2.13 Therefore, the extension is an NSIP pursuant to sections 14(1)(a) and 15(1) of the 2008 Act, and the development forming part of the extension (i.e. the authorised development) requires development consent pursuant to section 31 of the 2008 Act.

2.14 The 2008 Act does not provide that the existing generating station also becomes an NSIP if an extension (which is itself an NSIP) is approved or implemented. The existing generating station is consented and constructed pursuant to the TCPA 1990. It is not an NSIP, nor does it form part of one.

2.15 There is no analogous DCO precedent for this specific scenario, but as described in the paragraphs above it is anticipated and provided for by the 2008 Act. In The Wheelabrator Kemsley Generating Station (K3) DCO application a capacity extension was sought to an existing generating station. In respect of that project, the Secretary of State advised that a DCO application for the construction of a generating station with increased capacity may be a better alternative to a DCO application for an extension. The Wheelabrator Kemsley Generating Station (K3) can be distinguished from the authorised development in that the Wheelabrator Kemsley Generating Station (K3) extension did not involve any physical works which would satisfy the definition of 'development' and therefore section 31 of the 2008 Act was not met. As the authorised development clearly constitutes "development", it is therefore open to the undertaker (as it is doing) to seek development consent for the "extension" of the existing generating station only.

Operation of a generating station

2.16 In addition to development consent for the extension of the existing generating station described above, consent for the operation of the extended generating station at over 50MW is also required pursuant to section 36(1) and (1B) of the 1989 Act and section 140 of the 2008 Act.

2.17 Section 36 of the 1989 Act provides:

"*(1) Subject to subsections (1A) to (2) and (4) below, a generating station shall not be constructed at a relevant place (within the meaning of section 4), and a generating station at such a place shall not be extended* ***or operated*** *except in accordance with a consent granted by the appropriate authority* (emphasis added)

(1A) So far as relating to the construction or extension of a generating station, subsection (1) is subject to section 33(1) of the Planning Act 2008 (exclusion of requirement for other consents for development for which development consent required)

(1B) So far as relating to the ***operation*** *of a generating station, subsection (1) does not apply if the operation is authorised by an order granting development consent under the Planning Act 2008*" (emphasis added).

2.18 The 1989 Act therefore establishes that consent for the operation of a generating station with a capacity of greater than 50MW is required, unless such consent is obtained pursuant to the 2008 Act. Consent is not required under both Acts but consent must be obtained either under the 2008 Act or the 1989 Act. Such consent to operate a generating station with a capacity of greater than 50MW is an ancillary consent distinct from, and required separately and in addition to, the development consent required to construct or extend a generating station. While development consent to extend the existing generating station is required for the extension itself (as the NSIP is the extension – see paragraph 2.12), consent to operate a generating station with a capacity of greater then 50MW is required for the fully extended generating station (i.e. the existing generation station and the extension) - see commentary on Article 4 below. The Order limits therefore include the whole of the extended generating station.

2.19 The power to include consent to operate the extended generating station at a capacity of greater than 50MW in the Order is provided under section 120(3) of the 2008 Act (qualified by section 140) which authorises the provision of matters ancillary to the authorised development, as explained fully below in the commentary on Article 4 of the Order.

3. PROVISIONS OF THE ORDER

Part 1 – Preliminary

3.1 Articles 1 (Citation and commencement) and 2 (Interpretation) of the Order contain preliminary provisions.

Article 1 (Citation and commencement)

3.2 This provides for the commencement and citation of the Order.

Article 2 (Interpretation)

3.3 The purpose of Article 2 is to define various terms used in the Order. Particular definitions to note include:

3.3.1 "*authorised development*" encompasses all works and development authorised by the Order (as described in Schedule 1 of the Order) and should be read in that context in this Memorandum.

3.3.2 "*commence*" means beginning to carry out any material operation, as defined in section 155 of the 2008 Act (when development begins), forming part, or carried out for the purposes, of the authorised development. No carve outs from this definition have been included.

3.3.3 "*environmental statement", "land plan", "works plan"* have been included as these are key documents that will be certified under Article 11 of the Order and are key mechanisms by which the controls relating to the authorised development will be secured.

3.3.4 "*existing generating station*" means a generating station within the Order limits comprised of development authorised by planning permission issued pursuant to the 1990 Act including the TCPA permission and further TCPA permission. The TCPA permission is defined as "*planning permission granted by Slough Borough Council with reference P/00987/051 dated 1 February 2022, and any other variations thereto (which shall include for the avoidance of doubt any variations pursuant to Section 73 of the 1990 Act)*". The further TCPA permission is defined as "*planning permission granted by Slough Borough Council with reference P/00987/025 dated 2 June 2017, and any other variations thereto (which shall include for the avoidance of doubt any variations pursuant to Section 73 of the 1990 Act)*". Both will be certified under Article 11. The drafting approach to identifying or cross-referring to a TCPA 1990 permission has followed the style of other DCOs, for example the Wheelabrator Kemsley K3 Generating Station Order 2021 (definition of "K3 Sustainable Energy Plant Planning Permission") and the Abergelli Power Gas Fired Generating Station Order 2019 (in Schedule 11 (protective provisions) National Grid's protective provisions define "associated works" by reference to works permitted by pre-existing planning permissions, while Abergelli Solar Limited's protective provisions include reference to the pre-existing planning permission obtained for its solar farm). The definition of "*existing generating station*" has been included because it is required for the definition of "*extended generating station*". See further paragraph 3.36.3 of this Memorandum for an explanation of the effect of the drafting of the defined terms TCPA permission and further TCPA permission.

3.3.5 "*extended generating station*" means "*a generating station within the Order limits which includes (i) the extension of a generating station comprised of the authorised development and (ii) the existing generating station*". This definition is required because Article 4 authorises the operation of the extended generating station at a capacity of over 50MW.

3.3.6 "*maintain*" is defined as "*in relation to any part of the authorised development includes inspect, upkeep, repair, adjust, alter, remove, improve, refurbish, reconstruct and replace provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement, and any derivative of "maintain" is to be construed accordingly*". The words "provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement" have been included within the definition to prevent the maintaining of the authorised development in a manner or to a degree which has not been assessed under the parameters of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 or varies the authorised development. This ensures that any maintenance activities remain within the scope of the authorised development that has been assessed and considered by the Secretary of State as decision-maker. This definition is appropriate to enable the undertaker to properly maintain and protect the authorised development throughout the operational period. Precedent for similar Articles can be found in other generation DCOs, such as

Article 2 of the North London Heat and Power Generating Station Order 2017 and Article 2 of the Sizewell C (Nuclear Generating Station) Order 2022;

3.3.7 "*Order limits*" is defined as those limits shown on the works plan within which the authorised development may be carried out.

3.3.8 "*relevant planning authority*" means Slough Borough Council.

3.4 Article 2(2) clarifies that measurements within the Order are approximate. The purpose of this is to ensure that if, upon the carrying out of the works, it transpires that the distances, directions and lengths are marginally different to those listed in the Order, there is no issue over whether the works are permitted by the Order. The provision allows for a small tolerance with respect to any distances, directions and lengths within the Order limits.

3.5 Article 2(3) and (4) provides further explanation as to how references in the Order to numbered work, and other references are to be construed.

3.6 Article 2(5) clarifies that references to statutory bodies include their successors to the functions relevant to the Order.

Part 2 – Principal Powers

Article 3 (Development consent etc. granted by the Order)

3.7 This Article grants development consent for the authorised development to be carried out within the Order limits, subject to the Requirements in Schedule 2 of the Order and the other provisions of the Order. The power for this Article is provided for under section 115(1) of the 2008 Act.

Article 4 (Authorisation of the operation of the extended generating station)

3.8 Article 4 provides that, once constructed, subject to the Requirements in Schedule 2 of the Order and the other provisions of the Order the undertaker has the authorisation to operate the extended generating station at a capacity of over 50MW. This power does not relieve the undertaker of its obligation to obtain other operational consents that may be needed in addition to the Order, as expressly stated in Article 4(2).

3.9 This Article has been inserted to authorise the operation of the extended facility at a capacity of over 50MW (because section 36(1B) of the 1989 Act provides that consent is required under section 36 of the 1989 Act for the operation of a generating station of this type if the capacity of the generating station (when constructed or extended) exceeds 50MW unless the operation is authorised by a DCO). Section 140 of the 2008 Act provides that a DCO may include a provision authorising the operation of a generating station only if the development to which the DCO relates is or includes the construction or extension of a generating station, which the Order does. The power for this Article is provided under section 120(3) of the 2008 Act which authorises making provision relating to matters ancillary to the authorised development. Section 120(4) provides that provision may be made under subsection 120(3) for or relating to any of the matters listed in Part 1 of Schedule 5. Paragraph 5 of Schedule 5 to the 2008 Act includes within the list of matters "*The operation of a generating station*".

3.10 Similar Articles have been included in other generation DCOs including Article 6 of the North London Heat and Power Generating Station Order 2017, and Article 7 of the Sizewell C (Nuclear Generating Station) Order 2022.

Article 5 (Power to maintain the authorised development)

3.11 This Article provides, for the avoidance of doubt, that the undertaker has the power to maintain the authorised development at any time, except to the extent any other provisions in the Order or any agreement made under the Order provide otherwise.

3.12 This power for this Article is provided by section 120(3) of the 2008 Act.

3.13 Identical Articles have been included in other generation DCOs, such as Article 5 of the North London Heat and Power Generating Station Order 2017 and Article 6 of the Sizewell C (Nuclear Generating Station) Order 2022.

Article 6 (Benefit of the Order)

3.14 The "undertaker" is defined in Article 2 as SSE Slough Multifuel Limited or any person who has the benefit of the order in accordance with Article 6 and Article 7. Article 6 provides that subject to Article 7 (consent to transfer the benefit of the order), the provisions of the Order conferring powers on SSE Slough Multifuel Limited have effect solely for the benefit of SSE Slough Multifuel Limited. This Article overrides section 156(1) of the 2008 Act (as permitted by 156(2) of the 2008 Act) which limits the benefit of the Order to anyone with an interest in the land. Due to the nature of the authorised development, it is entirely appropriate that the powers under the Order are only exercised by the undertaker and not any other person with an interest in the Order limits (unless provided under Article 7).

3.15 Precedent for this Article can be found in Article 7 of the North London Heat and Power Generating Station Order 2017 and Article 6 of the Wrexham Gas Fired Generating Station Order 2017.

Article 7 (Consent to transfer benefit of the Order)

3.16 Article 7 anticipates that there may be circumstances where the undertaker seeks to transfer its rights and powers to another party. This Article enables the rights and powers under the Order to be transferred to another body.

3.17 Article 7(1) provides that the consent of the Secretary of State is required to transfer to another person or body the benefit of the Order and related statutory rights. This is to ensure that any transferee or lessee is deemed appropriate and qualified by the Secretary of State to take control of the authorised development under the Order. Article 7(4) provides that such consent is not required where the transferee or lessee is the holder of an electricity licence under section 6 of the 1989 Act. In such circumstances, the Secretary of State must be notified in the manner provided for in Articles 7(5) and (6). The exemption relating to a holder of an electricity licence is justified on the basis that, in considering whether to grant a generating licence under the 1989 Act, the Secretary of State will have established the fitness of the licence holder and its suitability to take the benefit of the Order.

3.18 Articles 7(2) and (3) secure the operation of the transfer of the benefit and make it clear that the transferee or lessee will be subject to the same restrictions, liabilities and obligations under the Order as the undertaker, and that the transferred benefit shall not be enforceable against the undertaker.

3.19 Similar Articles have been included in other generation DCOs including Article 9 of the Riverside Energy Park Order 2020, Article 5 of the Cleve Hill Solar Park Order 2020 and Article 8 of the North London Heat and Power Generating Station Order 2017.

Article 8 (Planning permission)

3.20 Article 8 establishes that works done pursuant to a planning permission granted within the Order limits, which are required in connection with the authorised development, shall not constitute a breach of the Order. Equally, works done pursuant to the Order shall not constitute a breach of planning permission.

3.21 This Article mirrors, for example, Article 11 in the M42 Junction 6 Development Consent Order 2020. This Article avoids unintended incompatibility between the Order and planning permissions which are pursuing the common aim of authorising the extended generating station. It is particularly appropriate in the context of the authorised development because, unlike many other DCOs, the existing generating station is constructed pursuant to planning permissions granted under the TCPA 1990.

Article 9 (Existing powers and duties of the undertaker)

3.22 Article 9 establishes that the Order does not prejudice the existing powers and duties of the undertaker pursuant to the Highways Act 1980, the New Roads and Street Works Act 1991 and the Town and Country Planning (General Permitted Development) (England) Order 2015. This makes clear that the Order is not intended to disapply these other legislative provisions.

Part 3 – Supplemental Powers

Article 10 (Defence to proceedings in respect of statutory nuisance)

3.23 Article 10 provides that no one should be able to bring statutory nuisance proceedings under the Environmental Protection Act 1990 in relation to a nuisance falling under section 79(1)(g) (noise) if:

3.23.1 the noise is created in the course of constructing, maintaining or decommissioning the authorised development and for which a notice under Section 60 has been given or consent obtained under Section 61 of the Control of Pollution Act 1974, or which cannot reasonably be avoided as a consequence of the authorised development; or

3.23.2 the noise is attributable to the use of the authorised development and complies with condition 20 of the TCPA permission, which establishes noise limits, or which cannot reasonably be avoided as a consequence of the use of the authorised development. This addition ensures that it will also be a defence if the noise effects are in compliance with the approved measures and limits.

3.24 The power for this Article is provided under section 120(3) of the 2008 Act which authorises making provision relating to matters ancillary to the authorised development. Section 120(4) provides that provision may be made under subsection 120(3) for or relating to any of the matters listed in Part 1 of Schedule 5. Paragraph 11 of Schedule 5 includes within the list of matters "*The imposition or exclusion of obligations or liability in respect of acts or omissions.*". A similar approach has been taken in other generation DCOs, for example, Article 38 of the Riverside Energy Park Order 2020 and Article 7 of the Cleve Hill Solar Park Order 2020.

Article 11 (Certification of plans and documents, etc.)

3.25 Article 11 requires the undertaker to submit copies of specific plans and documents to the Secretary of State to be certified as true copies following the making of the Order. This Article provides that any plans and documents that are certified under this Article can be used as evidence in any proceedings.

3.26 This Article is necessary to provide a procedure through which documents falling outside of the Order itself can be verified so that they can be relied upon. A similar approach has been taken in other generation DCOs, for example, Article 40 of the Riverside Energy Park Order 2020 and Article 33 of the North London Heat and Power Generating Station Order 2017.

Article 12 (Arbitration)

3.27 Article 12 makes provision for differences and disputes arising under any provision of the Order, unless otherwise provided for or a matter for which the consent or approval of the Secretary of State is required, to be determined by arbitration. It enables agreement to be reached between the parties as to whom to appoint as the arbitrator or, failing agreement, for the arbitrator to be appointed by the Secretary of State. The Secretary of State is considered to be the appropriate body given that any disputes will relate to a DCO.

3.28 This Article is necessary to provide a means for the resolution of disputes. Precedent for this approach can be found in other generation DCOs such as Article 42 of the Thurrock Flexible Generation Plant Development Consent Order 2022 and Article 34 of the North London Heat and Power Generating Station Order 2017.

Article 13 (Service of notices)

3.29 Article 13 sets out the manner in which notices or other documents required or authorised to be served for the purposes of the Order are to be served. In particular, it allows service by email with the consent of the recipient, and deals with the situation of service on an unknown landowner.

3.30 This Article is necessary as the service of notice provisions under sections 229 and 230 of the 2008 Act would not apply to notices served under a DCO. Precedent for this Article can be found in other recent DCOs, such as Article 41 of the Riverside Energy Park Order 2020 and Article 45 of the M42 Junction 6 Development Consent Order 2020.

Schedules

3.31 Schedules 1 to 3 are summarised below.

Schedule 1 – Authorised Development

3.32 Schedule 1 describes the authorised development by reference to the works plan. A summary of the authorised development, is contained in section 2.4 of this Memorandum.

Schedule 2 – Requirements

3.33 Section 2.1 – 2.2 of this Memorandum explains that consent has been granted under the TCPA 1990 for the existing generating station, and the authorised development comprises an extension of the existing generating station. The TCPA permission and the further TCPA permission which authorise the existing generating station will remain extant and will be supplemented (as opposed to superseded) by the Order.

3.34 The TCPA permission and further TCPA permission are referred to and defined in the Order (see section 3.3.4 of this Memorandum). No consequential changes are required to the conditions attached to the TCPA permission and further TCPA permission, or any of the documents or plans approved pursuant to them, as a result of the authorised development.

3.35 Schedule 2 to the Order includes Requirements in relation to the authorised development, which provide for the following:

3.35.1 The construction of the authorised development will be controlled by a construction environment management plan ("**CEMP**"), secured by Requirement 3(b). The CEMP

approved pursuant to condition 17 of the TCPA permission is suitable to control the construction of the authorised development without amendment.

3.35.2 No additional mitigation or other direct control over the construction, operation or decommissioning of the authorised development other than the CEMP is required. However, it is appropriate that the authorised development should be constructed, operated and decommissioned in accordance with and without breaching the controls set out in, and plans and documents approved under, the conditions which apply to the existing generating station, because both the existing generating station and extension will be operated together. This approach is also considered to aid administrative ease and clarity for the relevant planning authority, the public and other stakeholders. For the avoidance of doubt, it is also appropriate that the authorised development should not be commissioned until the pre-commissioning conditions which apply to the existing generating station have been satisfied. As such the Requirements identify certain conditions attached to the TCPA permission and further TCPA permission, and documents or plans approved pursuant to them, with which the authorised development must be constructed, commissioned, operated and decommissioned.

3.35.3 The Order anticipates the possibility of amendments being made by the relevant planning authority in the future through the procedures available under the TCPA 1990 to: (a) the conditions attached to the TCPA permission and the further TCPA permission, and/or (b) the documents and plans approved pursuant to these conditions.

(a) In respect of (a) above, the Order ensures that the authorised development must continue to comply with amended conditions through the following drafting included in the definitions of TCPA permission and further TCPA permission: "*and any other variations thereto (which shall include for the avoidance of doubt any variations pursuant to Section 73 of the 1990 Act)*". This approach ensures that if the relevant planning authority were to approve any variations to the conditions attached to the TCPA permission or further TCPA permission, then the same form of condition will continue to apply equally to the existing generating station and the authorised development. For the avoidance of doubt, the physical parameters of the authorised development are not controlled by the Requirements, and so could only be varied through a change to the Order. If this drafting were not included and the Order were to secure compliance with these conditions, the Order would need to be changed (using the non-material or material change process) if variations to the TCPA permission or further TCPA permission were to be approved by the relevant planning authority in the future.

(b) In respect of (b) above, the Order ensures that the authorised development must continue to comply with the most up to date versions of documents and plans if revisions are approved pursuant to the TCPA permission and further TCPA permission conditions through the inclusion of drafting which provides that the authorised development must be constructed and operated in accordance with the details approved "*including any revisions approved*" pursuant to the relevant conditions (see Requirements 3(b), 7(b), and 7(c)). This approach ensures that if the relevant planning authority were to approve any updated versions of the documents or plans approved pursuant to conditions of the TCPA permission or further TCPA permission, then the

same form of documents or plans will continue to apply equally to the existing generating station and the authorised development. If this drafting were not included, alternative drafting would be required to make clear that approval of updated versions of such documents or plans could be given by the relevant planning authority pursuant to the Requirements of the Order in parallel with any such approval under the planning conditions. There is extensive precedent in various DCOs for documents and programmes to be approved by the relevant planning authority pursuant to Requirements, in an equivalent way to planning permission conditions. For example:

(i) in the North London Heat and Power Generating Station Order 2017, the relevant planning authority is the authority responsible for approving plans and documents related to matters such as: external details, vehicular and pedestrian access, parking (Requirement 4); landscaping (Requirement 10(1)); drainage (Requirement 13(1)); ecology monitoring (Requirement 15(1)); and operational noise management (Requirement 17(1)). The relevant planning authority is also the authority to approve amendments or revisions to these documents, as Article 37(3) states that references to approved details "*are to be taken to include any amendment or revision that may subsequently be approved or agreed by the discharging authority, or other consent, agreement or approval of the discharging authority"*; and

(ii) in the Riverside Energy Park Order 2020, the relevant planning authority is the authority responsible for approving plans and documents related to matters such as: detailed design (Requirement 2); biodiversity and landscape mitigation measures (Requirement 3); highway access details (Requirement 8); drainage (Requirement 9); code of construction practice (Requirement 11); waste hierarchy scheme (Requirement 16); and operational noise monitoring (Requirement 19). The relevant planning authority is also the authority to approve amendments or revisions to these documents, as provided for by Requirement 27 (amendments to approved details).

(c) As the CEMP is required to control the construction of the authorised development and was mitigation assessed in the environmental statement, the version used in the ES assessments is a certified document and additional controls on revisions to that version are provided by Requirement 4.

3.36 The detailed Requirements attached to the Order are as follows.

3.36.1 Requirement 1 provides for clarity that certain references made in the TCPA permission and further TCPA permission when referred to in the Order shall be deemed to include the authorised development. It also sets out in full the wording of condition 17 of the TCPA permission, under which the CEMP was approved. As the CEMP is the key, and only, mitigation required in respect of the authorised development it is appropriate that the wording of the planning condition prescribing the content of the CEMP is contained in full in the Order. As noted previously, the CEMP itself is a certified document listed in Article 11.

3.36.2 Requirement 2 provides that the authorised development must not commence later than 5 years from the date of the Order coming into force. This time limit is a standard Requirement included in the majority of DCOs to ensure that a DCO cannot exist indefinitely without being commenced.

3.36.3 Requirement 3 lists the conditions attached to the TCPA permission and the further TCPA permission, and the documents and plans approved pursuant to those conditions, which must be complied with during the construction phase of the authorised development. This includes obligations to: prevent pollution (condition 11); to comply with approved noise levels (condition 20); to provide access from the highway (condition 24); not to allow drainage from the site into the highway or the highway drainage system (condition 26); to comply with the requirements of the Construction Environmental Management Plan (condition 17); and to comply with the approved details for the construction compounds (condition 21).

3.36.4 Requirement 4 provides that any future revisions to the CEMP approved pursuant to condition 17 of the TCPA permission shall only apply to the authorised development to the extent that such revisions would not result in new or materially different environmental effects to those assessed in the environmental statement as compared to the version of the CEMP certified under Article 11. The CEMP applies generally to the ongoing construction of the existing generating station to which the authorised development is subordinate, and so it is possible and appropriate that CEMP may be revised pursuant to condition 17 of the TCPA permission. However, as the CEMP comprises mitigation assumed to be in place in the environmental statement, the purpose of this Requirement is to ensure any future revision does affect or undermine the assessments in the environmental statement for the authorised development. As the CEMP is the only mitigation required in relation to the authorised development, this additional level of control is appropriate. The other conditions of the TCPA permission or further TCPA permission referred to in the requirements are for the purpose of ensuring consistency of construction and operation of the extended generating station as a whole. In contrast to condition 17 of the TCPA permission, none of these other conditions, or documents and plans approved pursuant to them, are mitigation assumed to be in place in the environmental statement and as such revisions to them would not give rise to any materially new or materially different environmental effects to those identified in the environmental statement. As such wording equivalent to Requirement 4 is not necessary in relation to any of the other conditions of the TCPA permission or further TCPA permission referred to in the requirements.

3.36.5 Requirement 5 provides that the local liaison group, which was established pursuant to the TCPA permission for the purpose of the existing generating station, shall also incorporate the authorised development within its remit.

3.36.6 Requirement 6 provides for the avoidance of doubt that the pre-commissioning conditions attached to the TCPA permission and the further TCPA permission are to be satisfied prior to the commissioning of the authorised development. These include: approval of a Contaminated Land Mitigation and Remediation Strategy Verification Report (condition 9); approval of a noise monitoring programme (condition 29); approval of a highways scheme covering matters such as security, routes, cleaning and parking (condition 36); approval of a pest control scheme (condition 37); and provision of the approved parking spaces (condition 6 of the further TCPA permission).

3.36.7 Requirement 7 lists the conditions attached to the TCPA permission and the further TCPA permission, and the documents and plans approved pursuant to those conditions, which must be complied with on an ongoing basis during the operational phase of the authorised development. These include:

(a) in respect of the TCPA permission compliance with approved noise levels (condition 20); use of approved fuel types (condition 23); compliance with dust control measures (condition 28); compliance with fuel delivery and storage requirements (conditions 30 and 31); no use of a public address system without relevant planning authority approval (condition 33); compliance with the waste hierarchy (condition 34); no waste transfer operations otherwise than in the context of the normal operation of the facility (condition 35);

(b) in respect of the TCPA permission compliance with the approved landscaping scheme (condition 4); compliance with the measures approved in the Contaminated Land Mitigation and Remediation Strategy Verification Report (condition 9); no drainage of surface water to the ground without express approval (condition 10); compliance with the approved odour management plan (condition 13); compliance with the approved fauna management plan (condition 18); compliance with the approved noise monitoring programme (condition 29); compliance with the approved highways scheme (condition 36); compliance with the approved pest scheme (condition 37); and

(c) in respect of the further TCPA permission retention of the approved cycle parking (condition 3 of the further TCPA permission); and retention of the approved living wall (condition 4 of the further TCPA permission).

3.36.8 Requirement 8 provides that the decommissioning of the authorised development must take place in accordance with the decommissioning scheme approved pursuant to condition 22 of the TCPA permission.

3.37 There is no Requirements discharge schedule in the Order because, as explained above, none of the Requirements themselves require discharge.